IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

CARL H. TICE   PETITIONER
ADC #129078

5:13CV00095 JLH/HDY

RAY HOBBS   RESPONDENT
Director, Arkansas
Department of Correction

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge J.

Leon Holmes. Any party may serve and file written objections to this recommendation. Objections

should be specific and should include the factual or legal basis for the objection. If the objection

is to a factual finding, specifically identify that finding and the evidence that supports your

objection. An original and one copy of your objections must be received in the office of the United

States District Court Clerk no later than fourteen (14) days from the date of the findings and

recommendations. The copy will be furnished to the opposing party.   Failure to file timely

objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or

additional evidence, and to have a hearing for this purpose before the District Judge, you must, at

the same time that you file your written objections, include the following:

1.   Why the record made before the Magistrate Judge is inadequate.

2.   Why the evidence proffered at the hearing before the District
        Judge (if such a hearing is granted) was not offered at the
        hearing before the Magistrate Judge.

3.   The detail of any testimony desired to be introduced at the
        hearing before the District Judge in the form of an offer of

> proof, and a copy, or the original, of any documentary or
> other non-testimonial evidence desired to be introduced at
> the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary

hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

> Clerk, United States District Court
> Eastern District of Arkansas
> 600 West Capitol Avenue, Suite A149
> Little Rock, AR 72201-3325

DISPOSITION

Petitioner Carl H. Tice filed this petition for a writ of *habeas corpus* on March 25, 2013.

Petitioner did not pay the filing fee, or file an application for leave to proceed *in forma pauperis*

("IFP"). When Petitioner failed to respond to an order to pay the filing fee, or file an IFP

application, the undersigned recommended dismissal of his petition. After Petitioner filed an IFP

application and objected to the recommendation, Judge Holmes declined the recommendation, and

referred the matter back to the undersigned for further proceedings.

On July 30, 2013, the Court entered an order concluding that Petitioner had sufficient assets

to pay the $5.00 filing fee, denying his IFP motion, and directing him to pay the $5.00 filing fee

(docket entry #8). That same order warned Petitioner that his failure to do so within 30 days would

result in the recommended dismissal of his petition. More than 30 days have passed, and Petitioner

has not paid the filing fee or otherwise responded to the order. Under these circumstances, the Court

concludes that the petition should be dismissed without prejudice for failure to pay the filing fee,

failure to comply with Local Rule 5.5(c)(2), and for failure to respond to the Court's order. *See*

Miller v. Benson, 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power to dismiss

sua sponte a case for failure to prosecute, and exercise of that power is reviewed for abuse of

discretion).

IT IS THEREFORE RECOMMENDED THAT:

1.   Petitioner's petition be DISMISSED WITHOUT PREJUDICE for failure to pay the filing fee, failure to comply with Local Rule 5.5(c)(2), and failure to respond to the Court's order.

2.   The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this __4__ day of September, 2013.

_____
UNITED STATES MAGISTRATE JUDGE